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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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TM02/0713

EXAMINER

EDELMAN, B

ART UNIT **PAPER NUMBER**

3153

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

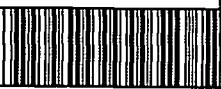
Application No.
09/449,237

Applicant(s)

Curry

Examiner
Bradley Edelman

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2153



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Apr 27, 2001

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1835 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-80 is/are pending in the applica

4a) Of the above, claim(s) _____ is/are withdrawn from considera

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-80 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirem

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) Other: _____

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DETAILED ACTION

This action is in response to Applicant's request for reconsideration filed on April 27, 2001. Claims 1-80 are presented for further examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 4-5, 9, 11-19, and 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levergood et al. (U.S. Patent No. 5,708,780, hereinafter "Levergood"), in view of Szabo (U.S. Patent No. 5,954,640), and further in view of Baker et al. (U.S. Patent No. 5,678,041, hereinafter "Baker").

In considering claim 1, Levergood discloses a method of providing services to an authorized user through a distributed communications network, comprising:

 sending a request from a portal to an on-line site (col. 3, lines 21-23);
 assigning an access code to the user, the access code defining a level of services available to the user (col. 3, lines 30-31, 50-53); and

 providing services to the user through the distributed network that correspond to the user's access code (col. 6, lines 5-16).

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However, Levergood fails to disclose that the site is a wellness related site, that includes at least one of wellness, health, or fitness services. Nonetheless, systems in which users are supplied wellness, health, and fitness services from a wellness related site are well known, as evidenced by Szabo. In a similar art, Szabo discloses a system in which a user can send requests and information to a wellness related site, and wherein users get different types of service (col. 6). Given the teaching of Szabo, a person having ordinary skill in the art would have readily recognized the desirability and advantages of using the access-level authorization system taught by Levergood, in order to control access to wellness related information, as disclosed by Szabo, so that preferred users, or users who pay more money for the service, can obtain superior service to users who do not wish to pay a higher premium fee. Therefore, it would have been obvious to use the authorization method taught by Levergood in the wellness related site taught by Szabo.

Although the combined teaching of Levergood and Szabo discloses substantial features of the claimed invention, it fails to explicitly disclose identifying a portal with a portal identifier, storing the identifier in a database, and processing the request at a controller to determine whether the request was from the portal. Nonetheless, these steps of verifying a requesting portal are well known, as evidenced by Baker. In a similar art, Baker discloses a system for selectively controlling access to a central information source, wherein a requesting machine ID is verified by a server, and compared to a list of IDs stored in a database, in order to allow the requesting machine to access the server (col. 4, lines 17-29). Given the teaching of Baker, a person having ordinary skill in the art would have readily recognized the desirability and advantages of using a

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machine id, as taught by Baker, for verification in the system taught by Levergood and Szabo, in order to improve system security. Therefore, it would have been obvious to use the machine ID verification taught by Baker in the system taught by Levergood and Szabo.

In considering claim 2, Levergood further discloses identifying the authorized user with a user identifier, storing the user id in a database, and processing the request to determine whether the request was from the authorized user (col. 6, lines 58-65).

In considering claims 4-5, Szabo further discloses the claimed retail site (col. 6, lines 44-51).

In considering claim 9, Szabo further discloses sending user identifying data through the distributed network (col. 4, lines 64-65).

In considering claim 11, Szabo further discloses gathering user lifestyle information (col. 3, lines 56-58; col. 4, lines 64-67).

In considering claim 12, Szabo further discloses adapting the level of services provided to the user based on the user's lifestyle information (column 10, lines 1-10).

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In considering claim 13, Szabo further discloses that the distributed network can be the Internet (col. 12, lines 63-64).

In considering claims 14 and 15, Levergood and Szabo further disclose the claimed electronic statements (Levergood, col. 9, lines 1-3; Szabo, col. 16, lines 10-11).

In considering claim 16, Szabo further discloses tendering payment information at the portal (credit card information), and transmitting the payment information from the portal to the wellness related site through the network (col. 16, lines 8-10).

In considering claim 17, Levergood further discloses assigning the access code in part on whether the user has been pre-authorized to receive the services from the server (col. 3, lines 44-55).

In considering claim 18, Levergood further discloses providing payment prior to requesting, and pre-authorizing the user to receive goods or services based on the payment (col. 8, lines 61-67). Although Levergood does not use the term "sponsor" a sponsor is inherently necessary in the system, since some sponsor must be providing the disclosed documents.

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In considering claim 19, Szabo further discloses that payments may be made to a third party (col. 16, lines 11-14).

In considering claim 26, Szabo further discloses providing user lifestyle information to the portal, and providing practical guidelines and advice to the user (col. 4, line 64 - col. 5, line 10).

In considering claims 27-29, Szabo further discloses assigning users to control groups, and providing goods and services, including user improvement plans to users based on the groups (col. 9, line 66 - col. 10, line 9).

In considering claim 30, Szabo further discloses providing models by experts in the field of the control and creating practical guidelines based on the models (col. 10, lines 11-15).

In considering claim 31, Szabo further discloses providing group result data to the portal, storing the result data to the group result data for the authorized user's control group, and adjusting the user improvement plan for each user in the group based on the stored group result data (col. 10, lines 1-34).

In considering claim 32, Szabo further discloses checking if the user improvement plan for users in the control group needs to be adjusted (col. 12, lines 45-52). It would have been obvious

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to a person having ordinary skill in the art to provide an alarm signal to the system administrator if adjustments are needed to make a human aware of potentially harmful drug interactions.

In considering claim 33, Szabo further discloses storing result data for the authorized user, and assigning the user to a new control group based on the stored data (col. 10, lines 15-34).

In considering claims 34-36, Szabo further discloses storing wellness related information, creating a wellness related profile, assessing the information to evaluate the user wellness profile, updating the information, and offering practical guidelines and advice to the user based on the profile (col. 4, line 64 - col. 5, line 32).

In considering claim 37, Szabo further discloses retaining a profile history of stored wellness related information, sending the profile history to the portal, and monitoring the history at the portal (col. 15, lines 5-14).

3. Claims 38-40, 43, 45-53, and 60-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levergood, in view of Szabo.

In considering claim 38, Levergood discloses a method of providing services through a distributed communications network, comprising:

sending a request from a portal to an on-line site (col. 3, lines 21-23);

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processing the request at a controller to determine whether the request was received from an authorized user (col. 6, lines 58-60);

assigning an access code to the user if the user is authorized, the access code defining a level of services available to the user (col. 3, lines 30-31, 50-53); and

providing services to the user through the network that correspond to the user's access code (col. 6, lines 5-16).

However, Levergood fails to disclose that the site is a wellness related site, that includes at least one of wellness, health, or fitness services. Nonetheless, systems in which users are supplied wellness, health, and fitness services from a wellness related site are well known, as evidenced by Szabo. In a similar art, Szabo discloses a system in which a user can send requests and information to a wellness related site, and wherein users get different types of service (col. 6). Given the teaching of Szabo, a person having ordinary skill in the art would of readily recognized the desirability and advantages of using the access-level authorization system taught by Levergood, in order to control access to wellness related information, as disclosed by Szabo, so that preferred users, or users who pay more money for the service, can obtain superior service to users who do not wish to pay a higher premium fee. Therefore, it would have been obvious to use the authorization method taught by Levergood in the wellness related site taught by Szabo.

In considering claim 39-40, Szabo further discloses the claimed retail site (col. 6, lines 44-51).

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In considering claim 43, Szabo further discloses sending user identifying data through the distributed network (col. 4, lines 64-65).

In considering claim 45, Szabo further discloses gathering user lifestyle information (col. 3, lines 56-58; col. 4, lines 64-67).

In considering claim 46, Szabo further discloses adapting the level of services provided to the user based on the user's lifestyle information (col. 3, lines 58-61; col. 5, lines 1-10).

In considering claim 47, Szabo further discloses that the distributed network can be the Internet (col. 12, lines 63-64).

In considering claims 48 and 49, Levergood and Szabo further disclose the claimed electronic statements (Levergood, col. 9, lines 1-3; Szabo, col. 16, lines 10-11).

In considering claim 50, Szabo further discloses tendering payment information at the portal (credit card information), and transmitting the payment information from the portal to the wellness related site through the network (col. 16, lines 8-10).

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In considering claim 51, Levergood further discloses assigning the access code in part on whether the user has been pre-authorized to receive the services from the server (col. 3, lines 44-55).

In considering claim 52, Levergood further discloses providing payment prior to requesting, and pre-authorizing the user to receive goods or services based on the payment (col. 8, lines 61-67). Although Levergood does not use the term “sponsor” a sponsor is inherently necessary in the system, since some sponsor must be providing the disclosed documents.

In considering claim 53, Szabo further discloses that payments may be made to a third party (col. 16, lines 11-14).

In considering claim 60, Szabo further discloses providing user lifestyle information to the portal, and providing practical guidelines and advice to the user (col. 4, line 64 - col. 5, line 10).

In considering claims 61-63, Szabo further discloses assigning users to control groups, and providing goods and services, including user improvement plans to users based on the groups (col. 9, line 66 - col. 10, line 9).

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In considering claim 64, Szabo further discloses providing models by experts in the field of the control and creating practical guidelines based on the models (col. 10, lines 11-15).

In considering claim 65, Szabo further discloses providing group result data to the portal, storing the result data to the group result data for the authorized user's control group, and adjusting the user improvement plan for each user in the group based on the stored group result data (col. 10, lines 1-34).

In considering claim 66, Szabo further discloses checking if the user improvement plan for users in the control group needs to be adjusted (col. 12, lines 45-52). It would have been obvious to a person having ordinary skill in the art to provide an alarm signal to the system administrator if adjustments are needed to make a human aware of potentially harmful drug interactions.

In considering claim 67, Szabo further discloses storing result data for the authorized user, and assigning the user to a new control group based on the stored data (col. 10, lines 15-34).

4. Claims 3, 6-8, 10, 20-25, 41-42, 44, 54-59, and 68-71, and 73-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levergood, in view of Szabo and Baker, and further in view of Britt (Savings & Community Banker, "The ATM Connection", Washington, Sep. 1994).

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In considering claims 3, 6-8, 10, 20-25, 41-42, 44, 54-59, although the combined teaching of Levergood, Szabo, and Baker discloses substantial features of the claimed invention, it fails to explicitly disclose whether portals are sponsored or non-sponsored. Nonetheless, the use of sponsored and non-sponsored portals for connecting to a network in a commercial environment is well known, as evidenced by Britt. In a similar art, Britt describes the ATM (Automated teller machine), which is a networked system wherein users make requests from sponsored and non-sponsored locations (i.e., users can connect to the central bank server from one of various banks' ATM machines). Thus, a person having ordinary skill in the art would have readily recognized the desirability and advantages of including sponsored and non-sponsored portals in the system taught by Levergood, Szabo, and Baker, so that when users log in from kiosks or other vendor-provided terminals (see col. 6, lines 5-9, 47-56; col. 14, lines 8-16), the sponsors of the terminals (i.e. a pharmacy or health center) can offer competitive features and/or prices in order to attract customers. Therefore, it would have been obvious to include sponsored and non-sponsored terminals, as taught by Britt, in the system taught by Levergood, Szabo, and Baker.

In further considering claims 6 and 41, Britt further discloses charging users according to the type of portal (page 4, paragraph 6, wherein "foreign transaction fees" will vary according to whether the portal is sponsored or non-sponsored).

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In further considering claims 3, 7-8, 10, 25, 42, and 44, and 59, the claimed steps of determining what type of terminal the request was sent from, and assigning the code according to which type of terminal the requested terminal was sent from are inherently necessary in the combined system taught by Levergood, Szabo, Baker, and Britt, in order to perform the tasks disclosed by Britt, such as charging users according to the type of portal.

In further considering claims 20-22, and 54-56, Szabo further discloses retaining a user's wellness related profile, and updating the user's profile from the portal (col. 5). It would have been obvious to a person having ordinary skill in the art allow the user to update the profile from sponsored or non-sponsored portals so that users can update their profiles from any available location.

In further considering claims 23-24 and 57-58, Baker further discloses providing services to a user depending on access to a specific portal (col. 4, lines 17-29). It would have been obvious to a person having ordinary skill in the art to extend this provision of services to include sponsored and/or non-sponsored portals as disclosed by Britt, so that the sponsors of the terminals (i.e. a pharmacy or health center) can offer competitive features and/or prices in order to attract customers.

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Claims 68-69, 73-78, and 80, contain no further limitations over the previously discussed claims, and are thus unpatentable for the reasons stated previously.

In considering claim 70, Szabo further discloses gathering user fitness, nutrition, and wellness information when a user first connects the portal to the on-line site (col. 13, lines 58-67).

In considering claim 71, Szabo further discloses updating the fitness, nutrition, and wellness information over time (col. 15, lines 9-10).

In considering claim 79, Szabo further discloses retaining data on goods for sale and goods sold to the user (col. 16, lines 16-39).

5. Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levergood, in view of Szabo, Baker, and Britt, and further in view of Salus Media Inc. (PCT No. WO99/03045, hereinafter “Salus”).

In considering claim 72, although the combined teaching of Levergood, Szabo, Baker, and Britt discloses substantial features of the claimed invention, it fails to explicitly disclose the inclusion of e-mail. Nonetheless, the inclusion of e-mail in a wellness related distributed network service is well known, as evidenced by Salus. In a similar art, Salus discloses a site for maintaining user wellness related information, wherein e-mail can be used to transmit information

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to and from the users (see p. 3, lines 3-20). Given the teaching of Salus, a person having ordinary skill in the art would have readily recognized the desirability and advantages of including e-mail in the system taught by Levergood, Szabo, Baker and Britt, so that messages could be easily sent between users and administrators in case user-specific questions were to arise. Therefore, it would have been obvious to include e-mail, as disclosed by Salus, in the system taught by Levergood, Szabo, Baker, and Britt.

Response to Arguments

In response to Applicant's request for reconsideration filed on April 27, 2001, the following factual arguments are noted:

- a. Levergood does not disclose providing a level of wellness related services dependent on a user access code.
- b. Szabo does not disclose assigning an access code to the user, the access code defining a level of wellness related services available to the user.
- c. Baker does not disclose assigning an access code to the user, the access code defining a level of wellness related services available to the user.
- d. Neither Levergood nor Szabo contain any teachings or motivation to combine the session ID network invention of Levergood with the nutritional supplement database access of Szabo.
- e. None of the cited references disclose adapting the level of services provided to the user based on the user's lifestyle information, as claimed in claim 12.

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f. Szabo does not disclose assigning the user to one of the control groups, as claimed in claim 27.

g. Szabo does not disclose adjusting a user improvement plan for each user according to the authorized user's control group based on the stored group result data, as claimed in claim 31.

h. Szabo does not teach providing an alarm signal to a system administrator if the user improvement plan for the users in a control group needs to be adjusted, as claimed in claim 66.

I. None of the cited references disclose a method or system in which a response to a request from a user is based on whether the portal is sponsored.

In considering (a) - (c), Applicant contends that neither Levergood, Szabo, nor Baker disclose providing a level of wellness related services dependent on a user access code. Examiner agrees that none of the three mentioned references taken alone discloses providing a level of wellness related services dependent on a user access code. However, Examiner had not rejected claims which include this limitation over any of the three references taken alone. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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In considering (d), Applicant contends that neither Levergood nor Szabo contain any teachings or motivation to combine the session ID network invention of Levergood with the nutritional supplement database access of Szabo. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, although neither reference alone suggests combining the features of the two references, a person having ordinary skill in the art would have readily recognized the desirability and advantages of combining the two references for the reasons already stated in Examiner's first office action.

As previously stated in the above office action, Szabo discloses a system in which a user can send requests and information to a wellness related site, and wherein users get different types of service (col. 6). Levergood further discloses a general network system for providing different levels of service (i.e. access) to users. Thus, given the teaching of Levergood and Szabo, a person having ordinary skill in the art would have readily recognized the desirability and advantages of using the access-level authorization system taught by Levergood, in order to control access to wellness related information, as disclosed by Szabo, so that preferred users, or users who pay more money for the service, can obtain superior service to users who do not wish

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to pay a higher premium fee. Therefore, it would have been obvious to use the authorization method taught by Levergood in the wellness related site taught by Szabo.

In considering (e), Applicant contends that none of the cited references disclose adapting the level of services provided to the user based on the user's lifestyle information, as claimed in claim 12. Examiner respectfully disagrees. Szabo discloses adapting the level of services ("models") according to user's lifestyle information in column 10, lines 1-10, wherein it is stated, "Thus, the models themselves may be adaptive based on the experiences of individual users or groups of users,... and other adaptive paradigms may be employed to dynamically improve the models through use and feedback...".

In considering (f), Applicant contends that Szabo does not disclose assigning the user to one of the control groups, as claimed in claim 27. Although Szabo does not explicitly disclose the step of assigning users to groups, that step is inherently necessary in order for users to be placed in groups. By being a member of a group, a given individual is inherently *assigned* to that group.

In considering (g), Applicant contends that Szabo does not disclose adjusting a user improvement plan for each user according to the authorized user's control group based on the stored group result data, as claimed in claim 31. Examiner respectfully disagrees. As stated in the above office action, Szabo further discloses providing group result data to the portal, storing the

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result data to the group result data for the authorized user's control group, and adjusting the user improvement plan for each user in the group based on the stored group result data (col. 10, lines 1-34, wherein it is stated, "The models themselves may be adaptive based on the experiences of individual users or groups of users").

In considering (h), Applicant contends that Szabo does not teach providing an alarm signal to a system administrator if the user improvement plan for the users in a control group needs to be adjusted, as claimed in claim 66. Examiner agrees, and thus had rejected the claim in the first office action under the grounds that it would have been obvious to a person having ordinary skill in the art to provide an alarm signal to the system administrator if adjustments are needed to make a human aware of potentially harmful drug interactions.

In considering (I), Applicant contends that none of the cited references disclose a method or system in which a response to a request from a user is based on whether the portal is sponsored. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner has rejected claims which include a limitation of sponsorship for the reasons stated in the above office action, in which various references containing well known features health-related networks and network

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access systems were combined. In view of the combined references, as stated above, it would have been obvious to base services on whether portals are sponsored or non-sponsored, so that sponsors of the terminals (i.e. a pharmacy or health center) can offer competitive features and/or prices in order to attract customers.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess, can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.

BE

July 9, 2001



GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100